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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TERESA PEQUIGNOT,

11 Plaintiff,

12 v.

13 DEUTSCHE BANK NATIONAL
14 TRUST COMPANY, et al.,

15 Defendants.

CASE NO. C10-0442JLR

ORDER OF DISMISSAL

16 I. INTRODUCTION

17 After filing this complaint on March 15, 2010, over one year ago, Plaintiff Teresa
18 Pequignot has made little effort to prosecute this matter. On March 14, 2011, after
19 detailing Ms. Pequignot's anemic efforts to advance her claims, the court issued an order
20 "to show cause why this action should not be dismissed as to **all** defendants for failure to
21 comply with Federal Rule of Civil Procedure 4(m), for failure to timely comply with the
22 court's January 10, 2011 order, and for failure to prosecute under Federal Rule of Civil

1 Procedure 41(b)." (Dkt. # 31 (emphasis in original).) Ms. Pequignot's response to the
2 court's order was due on Monday, March 28, 2011. Ms. Pequignot has failed to file a
3 response to the court's March 14, 2011 order to show cause.

4 Despite repeated extensions of time, and warnings from this court, Ms. Pequignot
5 has failed to adequately pursue her claims and timely respond to court orders. For these
6 reasons, as explained more fully below, the court DISMISSES this action in its entirety
7 for failure to prosecute, failure to timely comply with Federal Rule of Civil Procedure
8 4(m), and failure to respond to the court's March 14, 2011 order to show cause.

9 **II. BACKGROUND**

10 Ms. Pequignot filed her complaint more than one year ago on March 15, 2010.
11 (Dkt. # 1.) Pursuant to court order (Dkt. # 7), Ms. Pequignot was required to file the
12 initial Joint Status Report ("JSR") no later than June 28, 2010. After Ms. Pequignot
13 failed to timely file the JSR, the court issued an order to show cause ("OSC I") why the
14 matter should not be dismissed for failure to prosecute. (OSC I (Dkt. # 10).) In response,
15 Ms. Pequignot suggested a revised deadline of "sometime in November 2010." (Dkt. #
16 11 at 1.) To date, however, Ms. Pequignot has never properly filed a JSR on the court's
17 docket.¹

18 Although Defendant Law Offices of Karen L. Gibbons, PS, filed a notice of
19 appearance on April 22, 2010 (Dkt. # 5), this defendant has never filed an answer or

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21 ¹ Ms. Pequignot asserts that the initial JSR "was sent to the Court and to [the] email
22 address for proposed orders on June 28, 2010." (Dkt. # 11 at 1.) However, the court notes that
nothing was filed on its docket on or about June 28, 2010. Further, sending a JSR to the court's
email address for proposed orders does not constitute proper filing of the JSR.

1 otherwise responded to the complaint. Nevertheless, in the more than eleven months that
2 have passed since the notice of appearance was filed, Ms. Pequignot has never moved for
3 an order of default against this defendant.

4 When Ms. Pequignot failed to serve the remaining defendants within the 120-day
5 time limit of Federal Rule of Civil Procedure 4(m), she requested and received an
6 extension of time until October 20, 2010 to complete service. (Dkt. ## 12, 13.)
7 Nevertheless, Ms. Pequignot failed to serve any additional defendants by the extended
8 October 20, 2010 deadline.

9 On November 17, 2010, the court issued its second order to show cause why the
10 complaint should not be dismissed for failure to serve the remaining defendants. Ms.
11 Pequignot responded by requesting leave to amend her complaint and for a further
12 extension of time to accomplish service of process. (OSC II (Dkt. # 17).) On January 10,
13 2011, the court granted Ms. Pequignot's requests, ordering her to file her amended
14 complaint within ten days, and requiring her to accomplish service on all defendants
15 within twenty days. (January 10, 2011 Order (Dkt. # 18).) The court expressly warned
16 Ms. Pequignot as follows:

17 This lawsuit has now been pending for more than nine months. Therefore,
18 failure by Ms. Pequignot to accomplish service of process upon any
remaining defendant within the next 20 days will result in dismissal of that
defendant without prejudice.

19 (Id. at 4.)

20 Ms. Pequignot failed to timely file comply with the court's January 10, 2011
21 order. Although she filed an amended complaint, it was untimely pursuant to the court's
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1 order. (See Dkt. # 19.) Further, although Ms. Pequignot attempted to accomplish service
2 of process on various defendants following the court's January 10, 2011 order, all such
3 attempts were again untimely under the order. (See Dkt. ## 20, 21, 22, 23, 24, 29, 30.)

4 As a result, on March 14, 2011, the court issued its third order to show cause,
5 ordering Ms. Pequignot to respond by March 28, 2011 as to why the action should not be
6 dismissed for failure to comply with Federal Rule of Civil Procedure 4(m), failure to
7 timely comply with the court's January 10, 2011 order, and failure to prosecute under
8 Federal Rule of Civil Procedure 41(b). (OSC III (Dkt. # 31).) Although the court's
9 March 28, 2011 deadline has passed, Ms. Pequignot has failed to respond to the court's
10 third order to show cause.

11 In addition, on March 4, 2011, Defendants Deutsche Bank National Trust
12 Company and Bank of America filed a motion to dismiss, which they noted for hearing
13 on Friday, April 1, 2011. (Mot. (Dkt. # 26).) Ms. Pequignot's response to this motion
14 also was due on March 28, 2011. See Local Rules W.D. Wash. CR 7(d)(3) ("Any
15 opposition papers shall be filed and served not later than the Monday before the noting
16 date.") To date, Ms. Pequignot has failed to respond to this motion. (See Dkt. # 26.)
17 Local Rule 7(b)(2) states, in pertinent part, "[i]f a party fails to file papers in opposition
18 to a motion, such failure may be considered by the court as an admission that the motion
19 has merit." Local Rules W.D. Wash. CR 7(b)(2).

20 **III. ANALYSIS**

21 District courts have authority to dismiss actions for failure to prosecute or to
22 comply with court orders. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626,

1 629-30 (1962) (acknowledging district court's inherent authority to dismiss for failure to
2 prosecute); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (acknowledging
3 district court may dismiss action for failure to comply with any court order). As detailed
4 above, Ms. Pequignot has failed both to adequately prosecute her claims and to comply
5 with court orders.

6 In deciding whether to dismiss for failure to prosecute or failure to comply with
7 court orders, a district court must consider five factors: "(1) the public's interest in
8 expeditious resolution of litigation; (2) the court's need to manage its docket, (3) the risk
9 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
10 merits; and (5) the availability of less drastic sanctions." *Omstead v. Dell, Inc.*, 594 F.3d
11 1081, 1084 (9th Cir. 2010); see also *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994)
12 (failure to prosecute); *Ferdik*, 963 F.2d at 1260-61 (failure to comply with orders).

13 The first two factors – the public's interest in expeditious resolution of litigation
14 and the court's need to manage its docket – weigh in favor of dismissal. The court has
15 spent an inordinate amount of time prodding Ms. Pequignot to timely prosecute her case.
16 The court has issued three orders to show cause in this matter (Dkt. ## 10, 15, 31), and
17 granted multiple extensions of time (Dkt. ## 13, 18). Further, Ms. Pequignot has not
18 responded to the court's last order to show cause despite the court's warning that it was
19 considering dismissal of her case for failure to prosecute. (See January 10, 2011 Order at
20 4; OSC III at 4). Ms. Pequignot's failure to respond hinders the court's ability to prod
21 this case along, and suggests that Ms. Pequignot does not intend to prosecute this matter
22 diligently from here forward.

1 The third factor – prejudice to the opposing parties – also weighs in favor of
2 dismissal. A rebuttal presumption of prejudice arises when a petitioner unreasonably
3 delays prosecution of an action. *See Eisen*, 31 F.3d at 1452-53. Because Ms. Pequignot
4 has failed to respond to the court’s last order to show cause, there is nothing on the record
5 to rebut that presumption.

6 The fourth factor – public policy in favor of deciding cases on the merits –
7 ordinarily weighs against dismissal. However, it is Ms. Pequignot’s responsibility to
8 move towards disposition at a reasonable pace, and avoid dilatory tactics. *See Moffitt v.*
9 *W. Valley Detention Ctr.*, No. EDCV 08-1427-AHS(CW), 2011 WL 499282, at *2 (C.D.
10 Cal. Feb. 9, 2011) (citing *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir.
11 1991)). Despite the fact that the court has issued three orders to show cause, as well as
12 more than one extension of time with regard to service of process, Ms. Pequignot has
13 failed to timely move her claims forward at a reasonable pace within the course of the
14 past year. Further, she has now failed to timely respond to both a court order, as well as a
15 motion to dismiss. In these circumstances, the policy favoring resolution on the merits
16 does not outweigh Ms. Pequignot’s failure to respond to the court’s order to show cause,
17 to file documents within the time granted, or to respond to a pending motion to dismiss.

18 The fifth factor – availability of less drastic sanctions – also weighs in favor of
19 dismissal. The court cannot move this litigation forward without compliance with the
20 court’s deadlines and orders. Ms. Pequignot has repeatedly demonstrated that she is
21 unwilling to timely comply with court orders and deadlines. As noted, the court has now
22 issued three orders to show cause concerning Ms. Pequignot’s failure to timely prosecute

1 this matter. Ms. Pequignot has demonstrated an unwillingness to timely comply with
2 court orders by filing responsive documents within the time period allowed or taking
3 other necessary actions to reasonably advance the prosecution of this action. Indeed, Ms.
4 Pequignot has failed to even respond, timely or otherwise, to the court's last order.
5 Under these circumstances, dismissal for failure to prosecute, for failure to timely serve
6 process under Federal Rule of Civil Procedure 4(m), and for failure to respond to or
7 timely comply with court orders is appropriate.

8 Although dismissal may be appropriate, it should not be entered unless a litigant
9 has been notified that dismissal is imminent. *See W. Coast Theater Corp. v. City of*
10 *Portland*, 897 F.2d 1519, 1523 (9th Cir. 1990). Here, the court provided Ms. Pequignot
11 with repeated notification that the court was considering dismissal due to various dilatory
12 actions. (See Dkt. ## 10, 15, 18, 31.) Under these circumstances, the court has more than
13 fulfilled its obligation to provide notice. Because Ms. Pequignot failed to even respond
14 to the court's last order to show cause (Dkt. # 31), the court concludes that attempting to
15 provide further warnings would be futile.

16 **IV. CONCLUSION**

17 The court has previously and repeatedly warned Ms. Pequignot concerning the
18 potential consequences of her failure to file documents or accomplish other tasks within
19 the time period allotted, to comply with or timely respond to court orders, or to otherwise
20 reasonably advance the prosecution of her claims. Nevertheless, Ms. Pequignot's
21 delinquent behavior in prosecuting this action continues unabated as demonstrated by her
22 recent failure to respond to the court's latest order to show cause, as well as her failure to

1 respond to a pending motion to dismiss. Accordingly, pursuant to Federal Rules of Civil
2 Procedure 41(b) and 4(m), as well as the court's inherent authority to dismiss actions for
3 failure to prosecute or to comply with court orders, the court DISMISSES Ms.
4 Pequignot's action in its entirety without prejudice. The court further STRIKES all
5 pending motions (Dkt. ## 26 & 32) as moot.

6 Dated this 30th day of March, 2011.

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10 JAMES L. ROBART
11 United States District Judge
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